Loyalhanna Health Care Associates d/b/a Loyalhanna Care Center, a Pennsylvania Limited Partnership *and* Cynthia A. Clark, Erica J. Lewis, and Melanie M. Fritz. Cases 6–CA–28609, 6–CA– 28676, and 6–CA–28676–2

September 30, 2006

## ORDER REMANDING PROCEEDING TO ADMINISTRATIVE LAW JUDGE

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

On April 7, 1998, Administrative Law Judge Irwin H. Socoloff issued a decision in this proceeding. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

On October 30, 2000, the Board issued a decision in this case overruling the administrative law judge's finding that registered nurses Cynthia Clark, Erica Lewis, and Melanie Fritz are statutory supervisors. In concluding that the nurses are not supervisors, the Board majority found that the nurses do not exercise independent judgment with regard to any of the indicia of supervisory authority set forth in Section 2(11) of the Act. Although the Board majority found that the nurses provide direction to aides in conjunction with the nurses' responsibility for ensuring the quality of patient care, it further found that "[s]uch direction reflects nothing more than the [routine] exercise of the nurses' greater training, skill, and experience in helping less skilled employees perform their jobs [patient care and execution of patient care plans] correctly." Thus, the Board majority found no evidence that the nurses exercised independent supervisory judgment in overseeing and correcting employees' performance of patient-care activities. Citing Providence Hospital,<sup>2</sup> the Board majority concluded that the direction of another employee to perform discrete tasks stemming from the directing employee's experience, skills, training, or position is not supervisory authority within the meaning of Section 2(11) of the Act. Having found that Clark, Lewis, and Fritz are statutory employees, the Board majority further found that the Respondent violated the Act by threatening, disciplining, and discharging them because they engaged in protected concerted activities.

The Respondent subsequently appealed the Board's decision to the United States Court of Appeals for the Third Circuit, and the Board filed a cross-application for enforcement. In January 2001, the Board filed in the Third Circuit an unopposed motion to hold the case in

<sup>2</sup> 320 NLRB 717, 729 (1996).

abeyance, pending a decision by the Supreme Court in *Kentucky River Community Care, Inc. v. NLRB*. On May 29, 2001, the Supreme Court issued its decision in that case.<sup>3</sup>

Because some of the issues addressed by the Court in Kentucky River bear upon a determination in the instant case, the Board filed in the Third Circuit an unopposed motion to remand these proceedings. On October 30, 2001, the Court granted the Board's motion and remanded the proceedings to the Board for further consideration. The Board notified all parties that it had accepted the Court's remand and invited the parties to file statements of position as to the issues on remand. As we have explained, the issue before the Board on remand is whether nurses Clark, Lewis, and Fritz exercise independent judgment in assigning or responsibly directing subordinate employees. The Respondent and the General Counsel filed statements of position arguing, respectively, in favor of and against the nurses' supervisory status.

On September 29, 2006, the Board issued its decisions in *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, *Croft Metals, Inc.*, 348 NLRB No. 38, and *Golden Crest Healthcare Center*, 348 NLRB No. 39, in light of the Supreme Court's decision in *NLRB v. Kentucky River Community Care*, supra. *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest*, specifically address the meaning of "assign," "responsibly to direct," and "independent judgment," as those terms are used in Section 2(11) of the Act.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has decided to remand this case to the judge<sup>4</sup> for further consideration in light of *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest*, including allowing the parties to file briefs on the issue and, if warranted, reopening the record to obtain evidence relevant to deciding the case under the *Oakwood Healthcare*, *Croft Metals*, and *Golden Crest* framework.

## **ORDER**

IT IS ORDERED that this proceeding is remanded to the administrative law judge for appropriate action as described above.

IT IS FURTHER ORDERED that the administrative law judge shall prepare a supplemental decision setting forth

<sup>&</sup>lt;sup>1</sup> 332 NLRB 933 (2000), Member Hurtgen dissenting.

<sup>&</sup>lt;sup>3</sup> 532 U.S. 706 (2001).

<sup>&</sup>lt;sup>4</sup> Judge Socoloff has retired from the Agency. Accordingly, the chief administrative law judge is requested to ascertain the availability of Judge Socoloff. In the event that Judge Socoloff is not available, the case is remanded to the chief administrative law judge, who may designate another administrative law judge in accordance with Sec. 102.36 of the Board's Rules and Regulations.

credibility resolutions, findings of fact, conclusions of law, and a recommended Order, as appropriate on remand. Copies of the supplemental decision shall be served on all parties, after which the provisions of Sec-

tion 102.46 of the Board's Rules and Regulations shall be applicable.